$5,000/-. In default of paying this sum within 3 weeks of the date hereof the appellant shall serve 18 months' imprisonment.

Counsel for the appellant in the court below may well be deserving of some sympathy for the predicament in which he found himself when the accused insisted on pleading guilty against his advice. But in such a situation it may be a salutary rule for counsel to remember that in the last analysis they are officers of the court with an overriding duty to the cause of justice. Whilst taking due note of rule 16 of the Legal Profession (Practice and Etiquette) Rules 1978, it should also be borne in mind that an accused person should plead guilty or claim trial by his own mouth and not through his counsel or advocate: *R.* v. *Tan Thian Chai*[8]. Reference may also be made to *Archbold* Criminal Pleading Evidence and Practice 38th Edition paragraph 367 where it is clearly stated that

"The responsibility of pleading guilty or not guilty is that of the defendant himself, but it is the clear duty of defending counsel to assist the defendant to make up his mind by putting forward the pros and cons of a plea, if need be in forceful language, so as to impress on the defendant what the result of a particular course of conduct is likely to be: *R.* v. *Hall* [1968] 2 Q.B. 787".

Once that point is passed, and the plea of guilt entered it is the duty of counsel who still feels that the facts do not amount to an offence to say so in unequivocal terms to the court of first instance. No mileage can be gained by some half-hearted submission on appeal that the plea of guilt was made against counsel's advice. But as the court has observed earlier it does not share the view of counsel that the facts in this case do not support the plea of guilt and the conviction.

This appeal is accordingly dismissed subject to the variation in the sentence earlier indicated.

Appeal dismissed.

Solicitors: *R.K. Menon & Co.*

DATIN PEGGY TAYLOR v. UDACHIN DEVELOPMENT SDN. BHD.

[O.Cr.J. (Vohrah J.) September 22, 1983]

[Kuala Lumpur – Civil Suit No. 656 of 1977]

Architects – Abandoned project – Fees – Custom or practice – Applicability of P.A.M. guidelines

The plaintiff, as personal representative of the estate of her late husband Datuk Eric Taylor (the architect), sued the defendants for the sum of $687,500. for professional services rendered by the architect's sole-proprietorship known as "Eric Taylor dan Rakan-Rakan" in respect of a proposed multi-storeyed commercial and residential complex (the project). The plaintiff claimed the said sum on the ground that there has been abandonment of the project by Udachin or, on the ground of *quantum meruit.*

There is no law prescribing the scale of fees for architects. However, the Institute of Architects called "Pertubohan Akiteck Malaysia" (PAM), which is a voluntary organisation which no practising architect registered with the Board of Architects set up under the Architects' Act, 1967 is obliged to join, has provided certain guidelines called "Conditions of Engagement and Scale of Professional Charges" (P.50). A practising architect who is a member of P.A.M. is under no legal obligation to charge the scale fees prescribed in P.50 so that the architect could have agreed that his fee be paid on a lower scale as stipulated in the terms of the architect's letter of engagement (P.14) in this case.

The court had to consider whether or not the P.A.M. guidelines as to the calculation of fees in the event of abandonment (or for work done) could be imported in P.14.

The writ in this case was issued on March 15, 1977 well before the death of the architect on August 8, 1977.

Held, allowing the application: the P.A.M. guidelines should be imported because they reflect the custom or practice of the architectural profession. P.14 seems to be limited to the specific question of calculating the full fee when the project was successfully completed and did not provide for the contingency of abandonment. The plaintiff would therefore be entitled to the sum of $685,622.50 and costs.

CIVIL SUIT.

G. Krishnan for the plaintiff.
B.E. Teh for the defendants.

Cur. Adv. Vult.

Vohrah J.: The plaintiff, as personal representative of the estate of her late husband Datuk Eric Taylor (the architect), sues Udachin Development Sdn. Bhd. (Udachin) for the sum of $687,500/- for professional services rendered by the architect's

sole-proprietorship firm known as "Eric Taylor dan Rakan-Rakan" in respect of a proposed multi-storeyed commercial and residential complex (the project) to be built upon land held under Certificate of Title No. 1836 for Lot. No. 53 Section 57 in the City of Kuala Lumpur (the land), fronting Jalan Raja Chulan formerly known as Jalan Weld. The plaintiff claims the aforesaid sum on the ground that there has been abandonment of the project by Udachin or, in the alternative, on the ground of *quantum meruit.*

The relevant facts which I have found proved or undisputed are as follows. The land for the project was purchased at the price of $3.00 per square foot by a company called "Chin Brothers Company Sdn. Bhd." (the first company) in 1963 through the recommendation of the plaintiff. On June 14, 1963 the company called "Chin Brothers (Malaya) Sdn. Bhd." (the second company) was incorporated (See P.2). In 1964 the first company commissioned the architect to draw up plans for 2 blocks consisting of 52 units of bachelor apartments to be called "Weld Mansions" in respect of which development approval was given on December 15, 1964 (See P.3). In 1965 the architect was instructed to draw up plans for a 13-storeyed hotel instead. In 1968 the plans had to be changed again for a proposed 15-storeyed hotel with a bowling alley and a 4-storeyed shopping arcade for which development approval was also given by the Ministry of Local Government and Housing on September 14, 1970 (See P.4) On February 3, 1970 the land was transferred from the first company to the second company (See P.1) and on February 15, 1971 the second company wrote to the architect stating that it owned the land (See P.5). On January 18, 1974 the second company entered into an agreement with Perbadanan Pembangunan Bandar (Uda) whereby the second company agreed "to join Uda in the redevelopment of" the land and Uda undertook not to attempt "to gain control of the parent company, Chin Brothers Co. Sdn. Bhd." which was to be allowed, *inter alia,* "to buy up the two penthouses situate on the top floor of the project at cost price, such cost price to be decided by the Quantity Surveyor and the Architect" (See D.52). The second company on April 1, 1974 changed its name from "Chin Brothers (Malaya) Sdn. Bhd." to "Udachin Development Sdn. Bhd.", a company limited by shares (See P.2). On March 31, 1971 the Planning Authority of the Federal Capital by its development order P.6 granted planning permission for the development of the proposed 15-storeyed hotel with its 4-storeyed shopping arcade subject to 11 conditions. On October 20, 1971 the second company through its managing director, Chin Swee Loon, wrote to the architect intimating that it was in "the latter stage of negotiating finance and should conclude in the near future" and that when it was "quite certain of obtaining the finance" it would instruct its engineers, Messrs. Peter Chin Associates, to prepare the necessary plans in consultation with the architect "for submission" (See P.7). Up to this stage the architect had been dealing with the second company as his client. On December 12, 1972, when it seemed clear to the architect that the position of Uda *vis-a-vis* the second company had been clarified, the architect wrote the letter P.9 suggesting that the basis of his engagement in respect of the "enhanced scheme", resulting apparently from the company joining up with Uda, be set down in writing and he forwarded therewith a draft agreement D.53A relating to the appointment of the architect "upon the terms of the Malaysian Institute of Architects Conditions of Engagement and prescribed Professional Charges therein for the time being in force ..." (See Clause 1 of D.53A). There was no immediate response from the second company to this letter. When the second company transformed itself into "Udachin Development Sdn. Bhd." on April 1, 1974 the project came to be referred to as "Wisma Chinda" and it was to be a 28-storeyed commercial and residential complex consisting of a car-park to be located in the basement with three split levels and on part of the ground floor; shopping arcades on part of ground floor and on the first four floors; a restaurant, coffee-house, roof-garden and roof-terrace on the 5th floor; a swimming pool and recreation area on the 19th floor; apartments from the 20th to the 26th floors totalling 48 units; and a 2-unit penthouse on the 27th floor (See P.11). Although the board of directors of Udachin consisted of 12 members, the effective day-to-day management of the affairs of Udachin was in the hands of the project committee comprising four members, namely Peter Chin (D.W.1), his cousin George Chin, Kassim Sotin and Zulkarnain bin Ariffin (P.W.3) and about two years after the despatch of P.9 George Chin, acting purportedly on behalf of Udachin, set down the terms of the architect's engagement in a letter dated October 29, 1974 (See P.14) as follows:

"Udachin Development Sdn. Bhd.
78 Jalan Raja Chulan, Kuala Lumpur. 05-10 Tel: 290753/ 299157.

101, Brewster Road, Ipoh.

Ref:
Date: October 29, 1974.

Datuk Eric Taylor,
M/s. Eric Taylor & Partners,
11D, Jalan Parry,
KUALA LUMPUR 04-04.

Dear Datuk,

re: WISMA CHINDA

We hereby confirm your appointment as our Project's Architects.

As agreed upon your total fees shall be based on 3¾% (Three and three quarter percentum) of the final Quantity Surveyors' Estimates accepted by us of the Tendered Contract Price, whichever is the lower. Variations, Consultant fees, Development charges, contribution, and other payments of similar nature, shall not be considered in the determination of such price.

As regards scheme of payment, our Board has decided on $20,000/- per month commencing from November 1974. This scheme of payment shall be reviewed and amended as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project.

Enclosed is our cheque of $20,000/– being payment as referred to above.

Yours faithfully

(Signed)
George Chin

c.c.

Encik Kasim Sotin,
UDA."

On November 4, 1974 the architect wrote P.15 asking for clarification of the word "Variations" in paragraph 2 of P.14 but otherwise apparently accepting the scheme of payment as suggested in P.14 which had forwarded the first instalment of $20,000/- commencing from the month of November 1974. The instalments continued for 9 months up to and including July 1975 but for the next month August, the architect received only $10,000/- described by George Chin in his letter of August 8, 1975 (See P.58) as "interim fees" after which the architect received no further payments. On November 6, 1975 the architect then wrote the letter P.16 of Udachin in which he expressed regret for the cessation of the instalment payments towards his professional fees and intimated that he would stop all his technical meetings, his dealings with the other consultants, his work on the working drawings for the project and also that he would have to retrench staff on the ground that he could not afford to carry on his business without his fees being paid. On November 22, 1975 George Chin on behalf of Udachin replied to the architect that the partners of Udachin had discussed the contents of P.16 and that it was decided that the architect should submit a progress report of the work done by him "to date in order for us to review the situation" (See P.17). On November 27, 1975 the architect submitted his progress report (See P.18) and requested the fixing of a date of Udachin for the purpose of having a meeting of the consultants engaged in the project "in order to work out a possible and definite programme of works for the consultants." There was no reply to P.18 and no further instalment payments were made to the architect by Udachin. The architect fell ill about this time and was recommended to return to England for medical treatment which he did on October 31, 1976. On November 1, 1976 the architect's senior assistant, Wong Yuen Kee (P.W.4), on the instruction of Udachin successfully applied for the extension of the development order (See P.12) from the Planning Officer of Dewan Bandar-raya (See P.22, P.23, P.24 and D.43). During the architect's absence from Malaysia the plaintiff was his duly appointed attorney (See P.19) and, acting on the architect's instructions transmitted from time to time by telephone, the plaintiff sought legal advice and sent the letter P.20 dated December 8, 1976 requesting payment of $330,000/- as outstanding fees from the time of short payment in August 1975 up to and including December 1976 at the rate of $20,000/- per month as stipulated in paragraph 3 of P.14. This letter was signed on behalf of "Eric Taylor Dan Rakan-Rakan". On December 13, 1976 D.W.1 acting on behalf of Udachin replied by letter P.21 intimating that the payment of fees had been negotiated directly with the architect and drawing attention to the second sentence of paragraph 3 of P.14 where it was stipulated that the scheme of payment by instalment of $20,000/- per month "shall be reviewed and amended as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project." There was also a request by Udachin for a meeting with the architect for confirmation of the basis of payment (at a time when the architect was out of the country). Then on the instruction of the architect who was still in London the plaintiff caused a firm of solicitors

to send a notice of demand dated December 17, 1976 (See P.25) for the sum of $751,600/- stated to be the balance of the fees for abandonment of the project by Udachin after taking into account the sum of $190,000/- which the architect had received for the period November 1974 to August 1975 under the scheme of payment stipulated in P.14. The penultimate paragraph of P.25 reads:

"We are further instructed that our clients have sent you an A.R. Registered letter dated November 6, 1975 demanding immediate compliance of your monthly payments, failure of which our clients are entitled to treat the whole Project as abandoned. We are instructed that you have not even extended the courtesy of a reply to our clients. Consequently as a matter of course our clients are entitled to treat the whole Project as abandoned. We are instructed that you have not even extended the courtesy of a reply to our clients. Consequently as a matter of course our clients presumed that you have abandoned the above Project. As such our clients are now claiming from you the outstanding sum of $751,600/- being made up as follows:

1)	To abandoned fees	$941,600.00
	Less: payment made	$190,000.00
	Balance due	$751,600.00

On December 27, 1976 D.W.1 on behalf of Udachin replied by registered letter P.26 denying that Udachin had abandoned the project as it had been in contact with the architect for the most part of 1976 and enquiring when it could meet the architect "to discuss the matter." On February 14, 1977 the plaintiff's solicitors wrote P.27 to Udachin intimating that the architect did not wish to enter into any protracted discussions and requesting that Udachin settle the matter amicably by paying up the sum of $751,600/- demanded in P.25. Udachin's solicitors then replied by way of P.28 denying that the project had been abandoned as alleged in P.25 and stating that (accordingly) there was no liability on the part of Udachin to pay abandoned fees. When the plaintiff discovered that the architect had made a mistake in calculating the amount of the abandoned fees in the architect's handwritten slip of paper P.30, the plaintiff's solicitors sent Udachin the letter dated February 26, 1977 giving the corrected figure of $687,500/- as the abandoned fees due to the architect arrived at as follows:

"1)	Estimated total cost of the scheme ...	$35,100,000.00
2)	Abandoned fees calculated at 2/3 of 33¾% of estimated total cost ...	$ 877,500.00
3)	Less payment made ...	$ 190,000.00
	Balance due ...	$ 687,500.00"

The estimated total cost of $35,100,000.00 was derived from P.32, the 5th revised cost estimate of the project prepared by "Bridgewater, Coulton dan Rakan-Rakan" (the quantity surveyors) in January 1975, on the basis of plans submitted by the architect and "Juantara Konsultant Sdn. Bhd." (the structural engineers) wherein at the material time D.W.1 practised as a civil engineer. The quantity surveyors stopped work on the project in November 1975 but they did not consider the project to have been abandoned. There being no response from Udachin, the plaintiff on instructions from the architect caused a specially endorsed writ to be served on Udachin in the third week of March 1977 (See P.31A and P.31B) resulting in these proceedings in court. There is no law prescribing the scale of fees for architects. However the Institute of Architects called "Pertubohan Akitek Malaysia" (PAM), which is a voluntary organisation which no practising architect registered with the Board of Architects set up under the Architects' Act, 1967 is obliged to join, has provided certain guidelines called "Conditions of Engagement and Scale of Professional Charges" (See P.50). A practising architect who is a member of P.A.M. is under no legal obligation to charge the scale fees prescribed in P.50 so that the architect could have agreed that his fee be paid on a lower scale as stipulated in P.14. The writ in this case was issued on March 15, 1977 well before the death of the architect on August 8, 1977.

On the basis of the unchallenged or proven facts above described, it is clear that the architect ceased carrying out his professional duties after submitting the progress report P.18 when it evoked no response from Udachin despite the request therein by the architect, ostensibly at the instance of the other consultants, to convene a joint meeting of the consultants with Udachin "to work out a possible and definite programme of works for the consultants". In the light of the aforesaid facts, the question I have to decide is whether Udachin had abandoned the project on or about November 27, 1975 when P.18 was submitted to it at its request. I am not unmindful of the act of P.W.4 in applying for the renewal of the development order but this was done on the instruction of the architect before he left for London on October 31, 1976 as is to be expected of any reputable architect as a matter of course.

The plaintiff and P.W.4 testified that to their knowledge no meeting was in fact held. P.W.4 who was the actual architect in charge of the project would surely have known if a meeting actually took place. D.W.1 however stated that he and his father met the architect some time in December 1975 after receiving P.18 and explained to him that after review they wanted to cut costs and that they would be talking to the other consultants separately on the same matter. No witness was called by the defence to corroborate D.W.1's statement. As the claim involved a large sum of money I would have expected the defence to have procured the attendance of Chin San Loon and also of Robert Chin from Australia to corroborate D.W.1's evidence or their evidence could have been procured *de bene esse*. No such effort was made and, I think, in the circumstances a presumption arises under Section 114, illustration (g), of the Evidence Act, 1950 to the effect that their evidence if produced would prove unfavourable to the defence. Even without invoking these provisions, I am, on a balance of probabilities, satisfied that the evidence of the plaintiff and P.W.4 was more reliable having regard to their general demeanour and the forthright manner in which they presented their evidence on this point. I am satisfied that they were speaking the truth. Further D.W.1 struck me as too intelligent and too experienced a developer not to have kept a record of the meetings that he alleged were held with the architect especially in the circumstances when litigation must have been anticipated by any reasonable person. It was obvious that Udachin was dragging its feet with regard to the payment of the architect's fees because it was never in question that the plaintiff had to go and see the Chairman and Deputy Chairman of Uda on October 15, 1976 about non-payment.

I am satisfied that the architect ceased carrying out his professional duties after submitting, at the request of Udachin, the progress report P.18 (dated November 27, 1975) when it evoked no response from Udachin either in the form of the continuing payment of fees by instalment or the convening of the joint meeting of the consultants engaged in the project asked for by the architect ostensibly at the instance of the other consultants. I am also satisfied that up to December 8, 1976 when the plaintiff wrote P.20 to Udachin she was claiming on behalf of the architect his fees up to and including December 1976 in the sum of $330,000/-. It was only when the solicitors' letter P.25 dated December 27, 1976 was sent that the architect had construed the non-response from Udachin as constituting abandonment of the project on its part. I accept the evidence of the plaintiff that there was no reply from Udachin to P.18 or any communication whatsoever from that quarter resulting in the plaintiff having to go and meet the Chairman of Uda for his intervention in the matter. I also accept P.W.4's evidence that there was no meeting because if there had been one with the architect he would surely have known of it having been the architect directly in charge of the project. D.W.1's manner however was equivocal. He merely stated that he remembered that he and his father met the architect some time in December 1975. I could not help thinking this piece of the evidence was self-serving and not reliable. I therefore find as a fact that there was actually a breakdown in communication between the architect and Udachin despite his instruction to P.W.4 to remind Udachin to renew the development order for the project for such instruction, as I have said, would, in my view, be forthcoming from any responsible architect even in circumstances such as these where relations between the architect and his client must have have been strained. Certainly by the time the architect left Kuala Lumpur on October 31, 1976 for medical treatment in London there was no activity at all on the project and there was already an intention on his part evidenced by P.30 to claim for non-payment of fees as he must have considered that the failure to pay the instalments as prescribed in P.14 constituted a repudiatory breach of the terms of his letter of appointment. The question I have to decide is whether the provisions of the P.A.M. guidelines P.50 with regard to abandonment could be relied upon or could be called in aid when the contingency of abandonment was not provided for in P.14. I have no doubt that the architect intended all along, having regard to D.53 and D.53A, to put his employment relationship on the basis of the guidelines because Clause 1 of D.53A speaks of "the building project upon the terms of the Malaysian Institute of Architects Conditions of Engagement and prescribed Professional Charges therein for the time being in force, a copy whereof is annexed hereto". D.W.1 however testified that when he received D.53 which was dated December 12, 1972 he had taken exception to the foregoing provision because "P.A.M. rules are a disadvantage to the client". Accordingly, he stated, at the request of the project committee of Udachin, in the light of the second company experience, he and George Chin formulated P.14. He explained that the per-

centage of 3¾% as the basis for the calculation of the fee in P.14 is different from that of 7½% in the P.A.M. guidelines being half of that in the guidelines. He explained further that the percentage according to the P.A.M. guidelines was to be based upon the cost of the project when it was finally completed but P.14 intended the calculation to be based on either "the final Quantity Surveyors' Estimates accepted by (Udachin) or the Tendered Contract Price, whichever is the lower." I accept his evidence that there was the intention on the part of Udachin to be regulated by this formula and that there was agreement on the part of the architect to this formula as there has been no evidence adduced by the plaintiff which showed that the architect had not agreed to his total fees being based on the 3¾% formula. I also note that there is no provision in P.14 for the mode of payment in the event of the architect being able only to perform partial services because of abandonment or deferment of the project. In such an ambiguous situation the question arises as to whether or not the court is entitled to imply into P.14 the prevailing practice in the architectural fraternity in order to give business efficacy to the contract of employment subsisting between an architect and his client where the architect through no fault of his has to cease his professional duties because of the reduction and subsequent non-payment of his fees as a result of the unilateral act of his client in contravention of a scheme of payment prescribing that the sum of $20,000/- was to be paid every month subject to review and amendment "as and when necessary due to changes in schedule of construction progress of work and other factors relating to the project." Surely such a review and amendment must first be brought to the attention of and receive the assent of the architect. The Deputy Director of the Corporate Planning Group in Uda who was a director of Udachin and a member of the 4-member project committee of Udachin at the material time, Zulkarnain bin Ariffin (P.W.3), admitted that a large sum of fees was owing to the architect on the basis of P.14 because of the exhaustion of Udachin's internally generated funds and the slowdown in the market conditions and added that Uda was concerned about the stoppage of work which was intimated to Udachin by the architect's letter P.16. There can, I think, be no question that at this time, in view of P.W.3's evidence, Udachin was suffering from a lack of available funds giving rise to the inference that even if it wanted to pay the architect it did not have the finances to do so. He said the project committee did not however at this stage consider the project as having been abandoned. He went on to say that the normal practice in dealings with the architect, with which he must be presumed to be fully conversant in view of Uda's active and widespread involvement in the field of urban development, is to pay an architect 1/3 of the total fees payable at planning approval stage, 1/3 at the tender stage and the balance 1/3 on completion of the project. He explained that this practice was the general rule and its purpose was to ensure that the architect was not paid his full fee until the project was completed. Hence the provision for review was reflected in paragraph 3 of P.14. He explained further that although the reason for this provision was not clearly spelt out that was what Udachin intended. In other words what was provided therein was not what D.W.1 said he and George Chin had intended because of their experience in the second company but what in fact the project committee of Udachin had decided to regulate payment of the architect's fees based on 3¾% of "the final Quantity Surveyor's Estimates accepted by Udachin or the Tendered Contract Prices, whichever is lower". I accept P.W.3's evidence that at the end of 1975 the project committee thought that the project would be delayed by one year and therefore it can be assumed that there was no intention on the part of Udachin to abandon it. P.W.4 stated in no uncertain terms that on completion of the 45 drawings as listed in P.18 the architect had completed all the plans that were necessary for submission to the City Architect for building approval and that this approval would have been obtained as a matter of course and that if there were variations these variations could only take place after the building approval had been given by the City Architect. It is clear from his evidence that when Udachin received the 7th revised cost estimate of the Quantity Surveyors (See P.45) in January 1976 the architect had already stopped work on the project and he was concerned only with P.32, the 4th revised cost estimate. A practising quantity surveyor from the firm "Bridgewater, Coulton dan Rakan-Rakan" engaged by Udachin as its consulting quantity surveyors for the project, Wan Mokhtar bin Abdullah (P.W.5), in his evidence explained that the cost estimate as such represents the bill of quantities which is used as a tender document to enable the contractor to price the cost of a building project. He stated that his consulting quantity surveyors stopped work on the project in November 1975 after they

had received all the plans from the architect necessary to put up the cost estimate P.32 which was prepared in January 1975. They could not continue to work and complete the documents for tender because Udachin intimated to them in July 1977 that plans had to be revised by the architect and the consulting structural engineers as new fire legislation required such revision but this intimation, be it noted, was only given to them nearly two years after they had themselves stopped work on the bill of quantities for the project. He expressed his professional opinion that the failure by the client to give any instruction to the quantity surveyors after a period of about a year entitled them to treat their professional assignment to the project as having been abandoned although a lot would depend upon the relationship existing between the client and themselves as to whether they would treat the assignment as abandoned or not. He did also state that as far as they were concerned they did not consider that the project had been abandoned by Udachin. He further explained that when P.32 was submitted 95% of the information that was necessary for the undertaking of the project to completion by the contractor was available therein and that the architect had done his part in providing all the drawings that were required of him. Their inability to provide the remaining 5% of the information for the full pricing of the project, as I understood him, was due to the consulting structural engineers' not having furnished all the information required to them. The evidence of the representative of P.A.M., Graham Moffat (P.W.6), who at the time of the hearing was also the Chairman of its Practice Committee, indicates that the word "Variations" in the context of P.14 would mean amendment to the scope of the work introduced after the signing of the building contract between, in this case, Udachin and the building contractor involving some adjustment of the contract price and that this adjustment of the contract price can only take place after building approval had been obtained from the City Architect. His examination in court of the 26 working and detailed drawings of the architect (See P.40) led him to the view that the architect had done enough work to provide sufficient information for the quantity surveyors to prepare their bill of quantities from which to form the basis for the calling of tenders for the purpose, as I understood him, of going into construction. According to him the practice was that an architect could treat a project as abandoned if after submitting the plans, as the architect had done in this case, no instructions were forthcoming from the client after a period of 3 months from the date of submission in which event he would be entitled to two-thirds of the full fee provided for under his contract of engagement. In his view, even if there had been no abandonment the architect would still be entitled to the same amount for the work he had put in. His opinion was given as that of an expert by virtue of his standing as a practising architect and high official of P.A.M. I am satisfied that P.W.6's evidence is that of an expert and relevant to the proceedings. His expert opinion of the relevant part of paragraphs D. of P18 which reads:

"Working drawings

All working drawings in 1/8 scale have been completed and ready for submission to the Akitek Bandaraya for building approval subject to your instructions. Most of the major details have also been prepared and issued together with the working drawings to the Quantity Surveyor for his preparation of the Bills of Quantities. Below is a list of working and detail drawings completed."

was that the architect was seeking instructions from Udachin for building approval to be obtained for the working drawings. He would himself consider a lapse of 1½ years from the date of P.18 when no instructions were forthcoming as giving grounds for considering the project as abandoned. In the event, I am of the considered view that under the P.A.M. guidelines as represented by P.50 if an architect stipulates these guidelines as forming an integral part of his contract of engagement and this stipulation is accepted by his client he is entitled to claim two-thirds of his full fee on the basis of abandonment (or of work he had done) and in a situation such as this case he would be entitled to either two-thirds of the cost estimate of the podium ($18,323,900.00) and the tower block ($16,701,000.00) amounting to $35,024,900.00 as the final quantity surveyors' estimate if that estimate was accepted by Udachin or two-thirds of the tendered contract price, whichever is lower. In the absence of any tendered contract price, I am of the view that P.32 must be used as the basis for the quantity surveyors' estimate as that was the last cost estimate which the architect had knowledge of at the time he ceased work on the project and from which he wrote out the figure in P.30. The point I have to consider is whether or not the P.A.M. guidelines as to the calculation of fees in the event of abandonment (or for work done) can be imported into P.14. In my view they should be so imported because they reflect the

custom or practice of the architectural profession. P.14 seems to me to be limited to the specific question of calculating the full fee when the project was successfully completed and did not provide for the contingency of abandonment and it is, in my opinion, therefore fair and reasonable to imply Clause 3 (viii) read which Clause 3(iv) of P.50 into P.14. I accordingly enter judgment for the plaintiff in respect of fees due to the architect for abandonment of the project as follows:

1.	Estimate total cost of the project	=	$35,024,900.00
2.	Abandoned fees at 2/3 of 33¾% of estimated total cost	=	$ 875,622.50
3.	To payment on account	=	$ 190,000.00
	Balance due	=	$ 685,622.00

This sum of $685,622.50 will bear 8% interest from the date of the service of the writ. The plaintiff will also be entitled to the costs of this suit.

Application allowed.

Solicitors: *Krishnan V. Co.; Jagjit Singh & Co.*

HOCK HIN BROS. SDN. BHD. v. LOW YAT HOLDINGS SDN. BHD.

[O.C.J. (Edgar Joseph Jr.J.) July 4 & September 26, 1983]

[Penang – Civil Suit No. 268 of 1983]

Land Law – Caveat – Caveat removed by Registrar of Titles – Whether further caveat may be lodged by same person to protect the same claim on the same grounds – National Land Code, ss. 326(3) & 329(2).

In this case the defendant company applied for the removal of a caveat lodged by the plaintiff company in respect of certain land. The question raised was whether where a caveat has been in existence but has been removed by the Registrar of Titles any further caveat may be lodged by the same person to protect the same claim on the same grounds.

Held: the application for entry of a further caveat in this case was not prohibited by the National Land Code and therefore the application for the removal of the caveat must be dismissed.

Cases referred to:

(1) *Hong Keow Tee & Anor.* v. *Alkhared & Khoo Holdings Sdn. Bhd.* [1982] 2 M.L.J. 42.
(2) *Damodaran* v. *Vasudeva* [1974] 1 M.L.J. 128.
(3) *Arul Chandran* v. *Tara Rajaratnam* [1979] 2 M.L.J. 172, 174.
(4) *Forster* v. *Baker* [1910] 2 K.B. 636, 639.
(5) *Green* v. *Berliner* [1936] 2 K.B. 477, 493.
(6) *Police Authority for Huddersfield* v. *Watson* [1947] K.B. 842, 848.
(7) *Alma Shipping* v. *Salgaoncar* [1954] 2 Q.B. 94.
(8) *K.I. Muhiudeen Rawther* v. *K.E.P. Abdul Kassim* [1959] M.L.J. 257.

CIVIL SUIT.

Gan Teik Chee for the plaintiff.
P. Navaratnam for the defendant.

Cur. Adv. Vult.

Edgar Joseph Jr. J.: At the conclusion of the arguments I dismissed this application by Summons-in-Chambers by the Defendant Company, praying for removal of a caveat lodged by the Plaintiff Company in respect of certain land, the subject of the suit herein, and said that I would give my reasons for decision, which I now do.

The short but ever recurring and important point of law raised was whether, where a caveat was in existence, but has been removed by the Registrar of Titles pursuant to the provisions of section 326(3) of the *National Land Code*, any further caveat may be lodged by the same person to protect the same claim on the same grounds?

In *Hong Keow Tee & Anor.* v. *Alkhared & Khoo Holdings Sdn. Bhd.*[1], Arulanandom, J. answered this question in the negative, relying on *Damodaran* v. *Vasudeva*[2] and *Arul Chandran* v. *Tara Rajaratnam*[3]. I regret I found myself unable to agree with him. I recognised that judges sitting alone, whether in civil or criminal proceedings, and whether exercising original or appellate jurisdiction, are not bound by each other's decisions (*Forster* v. *Baker*[4]; *Green* v. *Berliner*[5]; *Police Authority for Huddersfield* v. *Watson*[6]; *Alma Shipping Co.* v. *Salgaoncar*[7]) though judicial courtesy requires that they do not lightly dissent from the considered opinions of their brethren. It was with these considerations in mind that I had approached the task of answering the question of law posed.

The only provision that prohibits an application for entry of a further caveat based on the like claim as that on which the former one was based is section 329(2) of the *National Land Code*, which explicitly provides: